

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ONE OF A KIND SOLUTIONS

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation time
RSA 275:44 IV liquidated damages

Employer: One of A Kind Solutions PO Box 8 Chester NJ 07930

Date of Hearing: November 4, 2014

Case No. 48905

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 16, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on October 15, 2014. Both parties appeared telephonically for the hearing.

The Wage Claim was filed for \$200.00 in unpaid wages, \$600.00 in unpaid vacation time and liquidated damages. The claimant was employed by the company from July 14, 2014 until August 5, 2014. The claimant was discharged for cause.

The claimant testified that when she was discharged from employment she told the employer that they had 72 hours to give her all wages due. She was not given any information on her payroll record. She worked for an hourly rate of \$15.00 per hour.

In the hiring agreement the wage structure was listed and there was a part of the agreement that the employer said that the claimant would have a week of vacation time in August. The claimant believes that she is due the remainder of the pay period when she was terminated. She also believes that she is due the one week of vacation time that was listed in the hiring agreement. Because the employer did not pay in accordance with the law the claimant feels that the employer was willful and did not have good cause for their action.

The employer testified that the claimant was hired to work 35 hours per week and was paid twice a month. There was a hiring agreement in place and the claimant was to receive a week of vacation in August because it had been planned before hiring.

The employer terminated the claimant and she was paid for all hours worked in the last pay period. The agreed upon vacation time would have been paid but the claimant was no longer employed by the company. The employer does not feel that there is a good cause for liquidated damages.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as vacation time into the category of wages when the time is due and owing.

RSA 275:44 IV The commissioner may, upon written petition showing good and sufficient reason, permit payment of wages less frequently than weekly, except that it shall be at

least once each calendar month. In all instances, payment shall be made regularly on a predesignated date. The commissioner may prescribe the terms and conditions of such permission, and limit the duration thereof.

The claimant can ask for liquidated damages if the decision is in his/her favor. The damages would be up to the amount of the Wage Claim and the Hearing Officer would have to find that the employer was willful and did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The employer provided credible testimony that the wages were paid for all hours worked in the last pay period. The law does not specify if the entire pay period has to be paid for an hourly employee. In this case the claimant was paid for all hours worked up to the time of discharge.

The employer was also credible about the vacation time. The claimant had a planned vacation time in August and this was planned before hiring. The employer agreed to let this happen even though the claimant had been hired just the month before. The claimant never got to take the leave because of the termination. There was no evidence if the leave policy was to accrue the leave or to receive it in a lump sum. In this case it is found that there was a verbal agreement between the employee and the employer and there was no working relationship at the time the leave was to be taken.

There is also no finding for liquidated damages. The Hearing Officer does not find that the employer was willful and did not have good cause for their action.

The Wage Claim is invalid.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 2, 2014

Original: Claimant
cc: Employer

TFH/slh